

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS

Richard Lightsey,

Case No. 2017-CP-25-00335

Plaintiff,

v.

South Carolina Electric & Gas Company, a  
wholly owned subsidiary of SCANA,

Defendant.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

LeBrian Cleckley, on behalf of himself and all  
others similarly situated,

Case No. 2017-CP-40-04833

Plaintiff(s),

v.

South Carolina Electric & Gas Company, and  
the State of South Carolina,

Defendants.

**ORDER DENYING PLAINTIFF LEBRIAN CLECKLEY'S FIRST MOTION TO  
COMPEL SOUTH CAROLINA ELECTRIC & GAS COMPANY'S RESPONSES TO  
PLAINTIFF'S REQUESTS TO PRODUCE DATED FEBRUARY 28, 2018**

This matter is before the Court on Plaintiff LeBrian Cleckley's<sup>1</sup> ("Plaintiff") Motion to Compel Responses to Plaintiff's Requests to Produce Dated February 28, 2018 ("Motion"), against Defendant South Carolina Electric & Gas Company ("SCE&G"), filed April 20, 2018.

<sup>1</sup> The Motion was filed before Case Management Order 2 was entered on May 2, 2018. Case Management Order 2 consolidated the Cleckley matter with the above-captioned Lightsey matter. The motion addressed in this Order was brought and filed only in the Cleckley matter, but this Order is being filed in both the Cleckley and Lightsey matters based on the directive of Case Management Order 2.

SCE&G filed a memorandum in opposition on April 27, 2018, and oral argument was held on April 30, 2018. For the reasons that follow, the Motion is denied.

### **PERTINENT BACKGROUND**

Plaintiff, an SCE&G electrical customer, filed this action shortly after SCE&G announced it was abandoning construction of Units 2 and 3 at the V.C. Summer Nuclear Power Plant (the “Project”). Plaintiff seeks to recover the rates he paid related to construction of the Project, claiming that SCE&G mismanaged construction and ignored the “true financial condition” of the Project. To that end, Plaintiff has asserted state law claims against SCE&G sounding in contract, tort, and equity. To date, Plaintiff has served a total of 38 requests for production on SCE&G. The Motion concerns nine of those requests, divided into two categories: (1) requests 1-6 seek “any and all documents prepared for and/or provided” by SCE&G to various government agencies or other entities pursuant to request or subpoena; and (2) requests 7-9 seek various appraisal and cost information regarding the Project.

On March 30, 2018, SCE&G asserted its objections to the nine requests at issue on, among other grounds, relevance to the subject matter of Plaintiff’s case. At the same time, however, SCE&G responded that it will “conduct a reasonable, good faith effort to search for, identify, and produce, on a schedule to be discussed with Plaintiffs’ counsel, non-privileged documents only to the extent that they are relevant to the allegations set forth in Plaintiff’s complaint and otherwise responsive to this request.” Discussions among counsel ensued, and SCE&G began a rolling production of documents on April 13, 2018. This Motion followed.

### **DISCUSSION**

Rule 26, SCRCP governs the scope of permissible discovery. Parties “may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter* involved

in the pending action.” Rule 26(b)(1), SCRCPP (emphasis added). Although “the scope of discovery [under Rule 26] is broad,” the South Carolina Supreme Court has held that “there are limits” to discovery, including that it “must be ‘reasonably tailored’ to include only relevant matters.” *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dept. of Health & Envtl. Control*, 387 S.C. 380, 387-89, 692 S.E.2d 920, 924-25 (2010). The decision to grant or deny a motion to compel discovery rests within the sound discretion of the trial court. *See generally* Rule 37, SCRCPP.

Plaintiff argues that because the materials requested in requests 1-6 have been produced by SCE&G to third parties in other proceedings and, Plaintiff contends that retrieval and production of the requested material is possible with relative ease, the documents should be produced. These are not the pivotal issues. Instead, the pivotal issue is relevancy. Relevancy is the linchpin of discovery and is, by definition, material that tends to prove or disprove a matter at issue. *See Black’s Law Dictionary*, “relevant,” 1035 (7th ed. 2000); *see also* Rule 26, SCRCPP. That material has been produced to third parties weighs neither for nor against production in the instant case. I do not find a clear nexus between the allegations of Plaintiff’s Complaint and the plain language of Plaintiff’s discovery requests, and the fact that the requested materials have been produced to third parties establishes no such nexus. SCE&G has represented to the Court that it intends to comply with the mandate of Rule 26, SCRCPP. Consequently, and because Plaintiff cannot establish a connection between these requests and the issues in this case, Plaintiff’s Motion should be denied.

Plaintiff also argues that, to be valid, relevancy objections must be specific as to why certain requested material is, in fact, not relevant, citing *Curtis v. Time Warner Ent.—Advance/Newhouse P’ship*, 2013 WL 2099496 (D.S.C. May 14, 2013). I disagree. Rule 26 itself

is specific as to what a party must provide under that rule, as it requires that the discovery must be “relevant to the subject matter involved in the pending action.” Rule 26(b)(1). SCE&G has assured the Court that it will comply with Rule 26 and produce, when properly requested, material which complies with Rule 26, which includes, of course, the requirement of relevancy.

For these reasons, Plaintiff’s Motion to Compel is denied.

AND IT IS SO ORDERED.

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Honorable John C. Hayes, III  
Presiding Circuit Court Judge

\_\_\_\_\_, 2018



Richland Common Pleas

**Case Caption:** Lebrian Cleckley vs South Carolina Electric & Gas Company ,  
defendant, et al

**Case Number:** 2017CP4004833

**Type:** Order/Compel

So Ordered

s/John C. Hayes III 2049